

Bryan Christopher Castaneda, Esq. State Bar No. 275095
bryanchristophercastaneda@gmail.com
LAW OFFICES OF MICHAEL E. REZNICK
A Professional Corporation
283 Ocho Rios Way
Oak Park, California 91377-5540
Tel: (818) 437-5630 - reznagoura@aol.com

Attorney for Plaintiffs DOE JEWISH USC FACULTY
MEMBER 2004 and DOE JEWISH USC STUDENT
1987, Individually And On Behalf Of All
Others Similarly Situated

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DOE JEWISH USC FACULTY MEMBER
2004, *et al.*,

Plaintiffs,

v.

UNIVERSITY OF SOUTHERN
CALIFORNIA, *et al.*,

Defendants.

Case No. 2:24-cv-05712-FLA (SSCx)

**PLAINTIFFS' NOTICE OF MOTION AND
MOTION FOR LEAVE TO FILE SECOND
AMENDED COMPLAINT DIVESTING
THIS COURT OF SUBJECT MATTER
JURISDICTION BY NEGATING
MINIMAL DIVERSITY; MEMORANDUM
OF POINTS AND AUTHORITIES IN
SUPPORT THEREOF; [PROPOSED]
SECOND AMENDED COMPLAINT**

DATE: October 25, 2024

TIME: 1:30 P.M.

CTRM: 6B, Hon. Fernando L. Aenlle-Rocha

TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

YOU ARE HEREBY NOTIFIED THAT on October 25, 2024 or as soon thereafter as
Counsel may be heard, in Courtroom 6B of this Court, located at 350 West 1st Street, Los
Angeles, California, before the Honorable Fernando L. Aenlle-Rocha, Plaintiffs herein,
individually and on behalf of all others similarly situated ("Plaintiffs") will and hereby do move
the Court for leave to file a Second Amended Complaint that alleges and makes clear that the
named Plaintiffs are citizens of the State of California and that it always was and is Plaintiffs'
intent to limit the putative class members or potential class members to Plaintiffs who are citizens

1 of the State of California.

2 Plaintiffs were well-aware of the potential for CAFA removal when they filed the
3 Complaint and First Amended Complaint (“FAC”) in the Los Angeles County Superior Court and
4 further contend that Defendant cannot establish even “minimal diversity” under the extant FAC.
5 (See Plaintiffs’ Motion for Remand) (Dkt.). Among other things, the FAC alleges that:

7 “This case is not subject to removal to federal court under the Class Action
8 Fairness Act [(hereinafter “CAFA”)] because the matter presents a home state or
9 local controversy involving California discrimination statutes and law and
10 California and Los Angeles based Jewish USC Professors and Faculty Members”
11 [and by implication California students when the original complaint was amended
12 to name a California citizen Jewish USC Student as a named Plaintiff and class
13 representative].
14

15 (FAC, para. 61).

16 Since Defendant concedes that it is a California citizen, a class of Plaintiffs and putative
17 classes comprised of only California “citizens” defeats diversity jurisdiction under 28 USC
18 section 1332 and even “minimal diversity” under CAFA.

19 The Second Amended Complaint makes this clear.

20 The only changes made to the FAC are under the sub-headings “The Parties” and “Class
21 Action Allegations.” Among other things, the SAC limits the putative classes to California
22 citizens and identifies with particularity that the named Plaintiffs and class representatives are
23 both California citizens. (See SAC, para. 60, 61 and new para. 63.b.).
24

25 For example, new paragraph 63.b. amends old para. 61 to make the allegations clear that
26 the parties are limited to California citizens:

27 “This case is not subject to removal to federal court under the Class Action
28

1 Fairness Act because the matter presents a home state or local controversy
2 involving only California residents and California discrimination statutes and law
3 and Los Angeles based Jewish USC Professors and other Faculty Members and
4 Students.”

5
6 This motion is made on the grounds that the Court invited Plaintiffs to seek leave to file a
7 Second Amended Complaint for the reasons stated when it issued its order granting Plaintiffs’ Ex
8 Parte Application seeking a continuance of Defendant’s Motion to Dismiss that was filed in part
9 on the grounds that a decision on the Court’s OSC re Remand and Plaintiffs’ Motion for Remand
10 – which are still pending - will not be necessary if the Court issues a favorable ruling on the
11 instant Motion for Leave to File a Second Amended Complaint because the Court will be divested
12 of subject jurisdiction under CAFA or otherwise as soon as the Second Amended Complaint is
13 deemed filed.
14

15 This motion is further made on the grounds that in the absence of bad faith, the Ninth
16 Circuit ordinarily permits amended pleadings that defeat diversity jurisdiction, even when adding
17 non-diverse defendants. See *Newcombe v. Adolf Coors Co.*, 157 F3d 686, 691 (9th Cir. 1998)
18 (“joinder” is permissive rather than mandatory and gives the court discretion to deny joinder in
19 analyzing a number of factors, all of which favor the Plaintiffs in this case). While Plaintiffs are
20 not seeking “joinder” and believe that the Second Amended Complaint is consistent with each
21 prior pleading on the issue of the absence of even “minimal diversity,” the case is instructive
22 about how the District Court’s should rule on such matters. When an amendment to the
23 complaint would deprive the court of subject matter jurisdiction, “a party may not rely on Rule
24 15(a) to amend a pleading without leave of court; such an amendment must instead be analyzed
25 pursuant to 28 USC section 1447(e).” *Vega v. Am Ins. Co.*, No. 20-cv-10631-FMO-JPRx, 2021
26 U.S. Dist. LEXIS 121430, 2021 WL 2665718, at *1 (C.D. Cal. June 29, 2021). See *Rodriguez*
27
28

1 *Andrade v. Ford Motor Co.*, 2023 U.S. Dist. LEXIS 47583, fn 2. *Newcombe*, supra, 157 F. 3d at
2 691.

3 This motion is based upon this Notice of Motion and Motion, the Memorandum of Points
4 and Authorities, the complete files and records in this action, including this Court's July 12, 2024
5 "Order to Show Cause Why Action Should Not Be Remanded For Lack Of Subject Matter
6 Jurisdiction ("OSC"), Plaintiffs' response in support thereof, including the Declaration of Michael
7 E. Reznick, the argument of counsel, and such other matters as the Court may consider.
8

9 While the Court invited Plaintiffs to file the instant motion in its "Order Granting
10 Plaintiffs' Ex Parte Application" (Dkt. 37), Plaintiffs also met and conferred with Defendant's
11 counsel pursuant to Local Rule 7-3 before filing the instant motion and sought a stipulation for
12 the same relief and remand, to no avail.

13 DATED: September 23, 2024

LAW OFFICES OF MICHAEL E. REZNICK
A Professional Corporation

14
15
16 By: /s/Bryan Christopher Castaneda
Bryan Christopher Castaneda

17 Attorney for Plaintiffs DOE JEWISH USC
18 FACULTY MEMBER 2004 and DOE JEWISH
19 USC STUDENT 1987, Individually And On Behalf
20 Of All Others Similarly Situated
21
22
23
24
25
26
27
28

1 **I. THE COURT MAY AND SHOULD GRANT PLAINTIFFS LEAVE TO**
2 **FILE THE PROPOSED SECOND AMENDED COMPLAINT BECAUSE IT**
3 **WILL DIVEST THIS COURT OF SUBJECT MATTER JURISDICTION**
4 **AND MAKE CLEAR WHAT PLAINTIFFS ALWAYS INTENDED – THAT**
5 **THIS CASE SHOULD BE PROSECUTED IN CALIFORNIA STATE**
6 **COURT BETWEEN CALIFORNIA CITIZENS AND DEFENDANT**

7
8 **A, Procedural History:**

9 Plaintiffs filed their original Complaint in the Los Angeles County Superior Court in or
10 about May 2024 and made but one amendment before service: Naming a California citizen as a
11 Jewish USC Student Plaintiff and class representative in addition to the Jewish USC Faculty
12 Member and class representative.

13
14 While there is not a single federal claim alleged and Plaintiffs are both citizens of the
15 State of California, Defendant removed the First Amended Complaint (“FAC”) on or about July 8
16 under CAFA, asserting in the Notice of Removal (the “Notice”) that there was “minimal
17 diversity, that Plaintiffs sought damages exceeding \$5 million and that the classes exceeded 50
18 members.

19 None of the facts stated in the Notice was true and none have been established by
20 Defendant.

21
22 About a week later Defendant filed its “Motion to Dismiss” and to Strike the Class
23 Allegations.

24 The Court recognized the deficiencies with respect to Defendant’s Notice and thus issued
25 an OSC re Remand. Plaintiffs subsequently filed a motion to remand the case. Both matters are
26 still pending.

27 By the instant proposed Second Amended Complaint (“SAC”) – which Plaintiffs contend
28

1 should not even be necessary in light of the expressed and implied intent pleaded by Plaintiffs to
2 avoid CAFA removal – the SAC makes clear that this Court lacks subject matter jurisdiction
3 because Defendant is a California citizen and the amended pleading will make clear that all
4 Plaintiffs henceforth will be limited to California citizens.

5
6 **B. Applicable Law:**

7 As a general rule, the “well pleaded” complaint rule makes plaintiff the “master of the
8 claim” for purposes of removal jurisdiction. This means that absent diversity, a case is removable
9 only where a federal question is presented on the face of the complaint. “[T]he party who brings
10 a suit is master to decide what law he will rely on.” *Caterpillar Inc. v. Williams* (1987) 42 US
11 386, 392. Thus, where (as here) plaintiff could maintain claims under both federal and state law,
12 plaintiff can prevent removal by ignoring the federal claim and alleging only state law claims.
13 *Rains v. Criterion Systems, Inc.* (9th Cir. 1996 80 F. 3d 339, 344.

14
15 Plaintiffs did just that in preparing the original and SAC, ignoring any federal civil rights
16 statutes and attempting to make it as clear as they could that this is a local controversy between
17 local residents and citizens against a California institutional giant. “Minimal diversity” never
18 existed and as set forth in Plaintiffs’ remand motion the case should be remanded without a SAC.

19
20 To the extent that the Court deems the SAC necessary for remand, the applicable law (at
21 least when a party tries to join a non-diverse Plaintiff for the express purpose of defeating
22 jurisdiction) requires a balancing of factors. See *Newcombe v. Adolf Coors Co.*, 157 F3d 686,
23 691 (9th Cir. 1998). All of the *Newcombe* and Ninth Circuit factors favor Plaintiffs in this case.

24 **C. Conclusion**

25 The Court should permit an amended pleading if there is any plausible claim that can be
26 stated. *Bell Atlantic Corp. v. Twombly* (2007) 550 US 544, 570. While Plaintiffs are not required
27 to argue Defendant’s MTD at this stage, Plaintiffs’ claims are not only meritorious they are
28

1 factually specific and detailed. But the only amendment sought here is to amend the pleading to
2 make clear that this Court never had jurisdiction and upon granting leave to amend will not have
3 jurisdiction.

4 For all of the foregoing reasons, Plaintiffs respectfully request that the Court grant leave to
5 file the attached Second Amended Complaint and issue an OSC or order thereafter remanding this
6 case back to the Los Angeles County Superior Court so that as Plaintiffs can litigate their claims
7 in the State forum they always intended.

8
9 DATED: September 22, 2024

LAW OFFICES OF MICHAEL E. REZNICK
A Professional Corporation

10
11 By: /s/Bryan Christopher Castaneda
12 Bryan Christopher Castaneda

13 Attorney for Plaintiffs DOE JEWISH USC
14 FACULTY MEMBER 2004 and DOE JEWISH
15 USC STUDENT 1987, Individually And On Behalf
16 Of All Others Similarly Situated
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on September 22, 2024, I served the following documents by and through the CM/ECF system all parties of record to this action and interested parties who are registered CM/ECF users, or have registered for electronic notice, or have consented in writing to electronic service, and that service will be accomplished through the CM/ECF system:

**PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR LEAVE TO FILE
SECOND AMENDED COMPLAINT DIVESTING THIS COURT OF SUBJECT
MATTER JURISDICTION BY NEGATING MINIMAL DIVERSITY;
MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF;
[PROPOSED] SECOND AMENDED COMPLAINT**

I declare under penalty of perjury under the laws of the State of California and United States of America that the foregoing is true and correct.

Executed on September 22, 2024 at Oak Park, California.

By: /s/Bryan Christopher Castaneda
Bryan Christopher Castaneda